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**Comments of the National Consumer Law Center on
Department of Treasury Notice of Proposed Rulemaking on
Electronic Benefits Transfer: Selection and Designation of Financial Institutions as
Financial Agents, 31 CFR Part 207, 62 Fed. Reg. 25572-25576 (May 9, 1997)
July 8, 1997**

These comments on the proposed rules referenced above are hereby submitted by the National Consumer Law Center¹ on behalf of its low-income clients across the United States and on behalf of the following national organizations: Public Voice for Food and Health Policy², the Welfare Law Center³, the National Community Reinvestment Coalition⁴, the National Rainbow Coalition⁵, and the California Reinvestment Committee⁶. At the outset we note our dismay that the proposed rules actually propose very little. They are exceptional in their lack of specificity regarding *all* of the details on delivery of federal benefits to the "unbanked" pursuant to Pub. Law 104-134. Numerous critical decisions regarding the delivery of federal benefits to recipients without bank accounts are not even addressed. Indeed, the proposed rules raise many more questions than they answer. These concerns are broadly grouped as follows:

- 1) **Combination of State and federal payments in a single account.** The rules contemplate that federal and state payments can be combined in the Treasury

¹ The National Consumer Law Center is a nonprofit organization specializing in advocacy in the areas of consumer banking and finance law on behalf of low-income people. We work with thousands of legal services, government and private attorneys, and other advocacy organizations around the country representing low-income and elderly individuals, who request our assistance with the analysis of banking and finance issues affecting low income consumers to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen examples of predatory lending to low-income people in almost every state in the union. It is from this vantage point--many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities--that we supply these comments. *Cost of Credit* (NCLC 1995), *Truth in Lending* (NCLC 1996) and *Unfair and Deceptive Acts and Practices* (NCLC 1991), are three of twelve practice treatises which NCLC publishes and annually supplements. These books as well as our newsletter, *NCLC Reports Consumer Credit & Usury Ed.*, describe the law currently applicable to all types of consumer financial transactions.

²Public Voice for Food and Health Policy is a national non-profit located in Washington, DC, that has worked on food and agricultural issues from a consumer perspective since 1982.

³The Welfare Law Center, located in New York City, is a national legal and policy organization that works with and on behalf of poor people to ensure that adequate income support is available when necessary to meet basic needs and foster healthy individual and family development. The Center achieves its goals through legal and policy analysis, legal representation, public education, training, and aid and support to advocates.

⁴The National Community Reinvestment Coalition (NCRC) is the nation's largest CRA (Community Reinvestment Act) membership organization. The goal of NCRC is to increase fair and equal access to credit, capital and banking services. NCRC, representing over 615 national, regional and local community organizations seeks to support and provide tools to build community and individual net worth.

⁵The National Rainbow Coalition is a multiracial, international membership organization found by Rev. Jesse L. Jackson, Sr. to move the nation and the world toward social, racial and economic justice.

⁶The California Reinvestment Committee (CRC), located in San Francisco, is a membership organization of more than one hundred and seventy California nonprofit organizations and public agencies that work together on CRA issues. CRC advocates for affordable housing, community economic development, and consumer lending and services and also assists local community coalitions with community reinvestment strategies.

established EBT account. This triggers a myriad of issues, which should be addressed *before* these payments are combined.

- 2) **Lack of criteria specified for Treasury's selection process of financial agents.** The basic questions concerning how Treasury will choose the financial agents must be answered: for example, the bidders' methods of addressing the consumer issues; their proposed use of non-financial institutions as subcontractors; whether they will have monopoly jurisdiction over geographical areas; whether and by what criteria they will be compensated by Treasury or by the federal recipients. **Consumer Issues** — These rules fail to address crucial consumer issues such as the *cost of the accounts*, *the cost of transactions*, *the amount of access in the recipients' communities*, *safety concerns*, *other services provided by the financial agents*. **Use of non-financial agents and access to mainstream banking services** — An essential component in Treasury's selection process of financial agents should be whether *non-financial institutions* will be part of the delivery process and the effect of the choice on access to mainstream banking services in the community.
- 3) **Essential Issues Affecting Recipients Must be Resolved.** These can be identified within a number of different themes:
 - The problems resulting from delivery of federal payments via *stored value cards* which are completely unregulated in the United States and have no consumer protections attaching to their use.
 - The potential for a *stigma* to attach to users of the "Benefit Security Card," as well as the importance of the name of a particular financial institution being prominently displayed on the Benefit Security Card.
 - The failure of the rules to assure recipients that federal payments delivered via the Benefit Security Card will not be subject to *set-off or attachment*.

The sheer number of questions, as well as the enormity of the impact of the answers on the financial welfare of millions of Americans, dictates that Treasury start all over again.⁷ Comprehensive, clear and specific proposed regulations must be developed to deal with each of these issues.⁸ The proposed rules are essentially meaningless unless these issues are addressed.

1) **Combination of State and federal payments in a single account.**

⁷The only decisions that Treasury has revealed in these proposed rules on the many tough issues involved in developing this new delivery system are: 1) that Treasury will have full control over the accounts established for the unbanked recipients; 2) these accounts will be established at financial agents which must be financial institutions; 3) the financial agents will be chosen exclusively by Treasury; 4) access to the federal funds by the unbanked will be provided through cards denominated "Benefit Security Cards"; 5) financial agents can provide access to the federal funds through non-financial institutions; and 6) state benefits can also be disbursed to recipients through these accounts established by Treasury, although no other funds can be added to these accounts.

⁸We assume that later rules will address the issues of the criteria by which the Treasury will allow hardship waivers from the requirement of receiving federal payments electronically, as well as the information delivery system contemplated by Treasury to apprise recipients of their rights.

This concern relates to the impact on recipients of proposed **Section 207.3(a)(3)**, which authorizes the designated financial agents of direct federal EBT to provide for the deposit of state administered cash EBT benefits to these accounts. Since neither the preamble nor the proposed regulation explain this provision, it is difficult to discern what is envisioned. Some questions that arise include:

- Would this option only apply to recipients of state benefits for whom a direct federal EBT account has been established or could it apply to other recipients of state or locally administered cash benefits as well?
- Would this election be made solely by the state or local government or would the recipient be able to choose between this option and the state's own EBT system if they are otherwise unbanked? If the latter, what information would be provided to facilitate an informed decision?
- Would the recipient of state or locally administered cash benefits be able to switch back to the state EBT system if dissatisfied with the services provided by Treasury's financial agent or would they be locked into the system unless they could come up with their own direct deposit account?
- What account terms and conditions will apply to the state benefits deposited into these accounts? Will the state funds still be subject to the state rules on transaction fees, training, and other customer services, or will the state treat the state funds in the Treasury owned account as a direct deposit subject to the terms and conditions negotiated between Treasury and the Financial Agent?
- Will the protections of Reg E apply to the state funds as well? If not, how will the financial agent treat lost or stolen funds? Even if reimbursement for losses might be limited to the federal portion of the funds, how will the error resolution procedures affect the state portion of the funds? To what extent will receipts and monthly statements be required for the federal portion of the funds, but not for the state portion?
- What is the reason for disallowing other deposits from being made into Treasury accounts? The more money deposited into the account, the more float is available to the financial institution. Moreover, why should Treasury deliberately forbid recipients from leveraging their *required* use of a financial institution into even limited access to mainstream banking. How would it hurt for recipients to be able to deposit other funds into these accounts? Savings opportunities should certainly be encouraged.

We submit that all of these questions need to be addressed in the context of the rulemaking process before any final action is taken with respect to proposed Section 207.3(a)(3) and that there needs to be a meaningful opportunity for public comment on this matter. Such opportunity has been effectively precluded by the absence of any specifics in this NPRM. We therefore urge that no final

action be taken with respect to proposed Section 207.3(a)(3) until a new NPRM is issued clarifying these matters and soliciting public reaction.

Clearly, it is in the states' financial interests to move as many recipients of state and local benefits into direct deposit relationships as possible, as such arrangements are far less costly to the states than paying contractors to administer EBT "accounts" for such recipients. On its face, this proposed provision thus smacks of providing states with a vehicle to get out of a more costly EBT arrangement at the expense of recipients by forcing already financially challenged low income recipients to pay any fees and service charges that may be associated with this new direct deposit debit only account rather than a possibly "free" state EBT account. Before Treasury opens this door and possibly creates irreparable harm to recipients of state and local payments, it needs to clarify its intent and afford an opportunity to further comment.

2) Lack of criteria specified for Treasury's selection process of financial agents.

The basic questions concerning how Treasury will choose the financial agents must be answered. Some of these questions are:

- What will be the process by which financial agents will be chosen? How will Treasury evaluate the applicants for the financial agent? Will the needs of Treasury be those used as a criteria, or those of the recipients, or those of the community? What opportunity, if any, will recipients have to voice their choice in the matter of who will be their financial agent?
- Will the financial institution's ability to provide full coverage of a geographic region be rewarded, or a factor? Treasury's job will be made much more simple by contracting with fewer financial agents. But broad geographic coverage across the United States, a region, or even a state, may not provide the best access for recipients. Whose needs will be considered? How will these competing interests be balanced?
- Will one financial institution be granted a monopoly over a geographic area in which other financial institutions might be able to provide better service, albeit over a smaller geographic area? In other words, could there be blanket coverage over a region by one financial agent, with pocket areas granted to other agents who would better meet the needs of the recipients within the smaller region? Will the interoperability of the systems proposed by financial agents in proximate geographic areas be a consideration?
- Will the cost to recipients in accessing their federal money be a factor?
- Will convenience and safety in access be a factor? Will the bidder's proposed method of addressing the myriad of other consumer issues (see below) be a factor?
- Will commitment to providing access to mainstream banking services, be considered? How about other efforts of the bidder to improve — to reinvest in — the community?

- Will the proposed use of some or all types of non-financial institutions as a partner be a negative factor?
- How will Treasury assure access to their payments by federal recipients who live in an area with no reasonable access through a financial agent?
- Will recipients be able to choose their financial agent? Or change their financial agent from one provider in their area to another?

Consumer Issues — These rules fail to address crucial consumer issues. Treasury indicates its intention to leave to negotiation between Treasury and the financial agent the crucial issues of what customer services will be provided to federal EBT recipients.⁹ At the least, the minimum acceptable standards should be outlined in proposed regulations subject to public comments.

Basic protections for federal EBT are absolutely essential. We have a number of concerns with respect to the manner in which many of these issues have been addressed both in the Direct Payment Card system in Texas and in the Southern Alliance of States direct federal EBT project. As a result, we do not have confidence in simply leaving it to Treasury and the federal program agencies to resolve these matters in the best interests of recipients in the absence of any opportunity for input and comment from those organizations representing recipient interests. Moreover, unlike these prior projects, where the participation of direct federal benefit recipients is voluntary and they can at least opt not to participate and continue to receive their paper checks if they do not like the terms and conditions of the EBT system, what is apparently being contemplated here is a mandatory system for all otherwise unbanked recipients of direct federal payments. The mandatory nature of participation makes the applicable terms and conditions governing such accounts all the more critical.

The minimum attributes of a required electronic account for the receipt of federal payments must meet basic regulatorily established criteria comparable to those established by USDA in the food stamp EBT context. Otherwise, if high costs, excessive risks and/or difficulties in accessing the payment are inherent, the electronic option will be far worse than the paper system. The Appendix to this comment explains the basic minimum requirements that should be included as a baseline standard for the award of any contract as a financial agent for direct federal EBT purposes. Following is a quick summary:

- **Prohibition on the assessment of monthly account fees.** Any mandatory federal EBT system must prohibit the contractor from imposing any monthly account fees on recipients.
- **Reasonable access to cash withdrawals.** Reasonable access to cash withdrawals should include no fewer than four free ATM withdrawals at the financial institution at which the account is held per month, plus a reasonable number of ATM balance

⁹Proposed Section 207.3(a)(5) states merely that the financial agent would be required to provide services under “such terms and conditions as the [Financial Management] Service specifies”. Moreover, the preamble, at p. 25576, explicitly states that these will be detailed in either the IEI or the Financial Agency Agreement between FMS and the financial agent, *neither of which affords any opportunity for public comment.*

inquiries. In the absence of ATM availability, the same general rules should apply to teller withdrawals.

- **Limits on fees for access to cash.** Recipients who use the ATMs of the financial agent with whom the account has been established or any of its subcontractors, on a more frequent basis than four times a month, should be charged no more than the actual cost of the transaction to the financial agent.
- **Prohibition on fees for point of sale transactions involving a purchase.** The financial agent must be able to provide assurances that no fees or surcharges will be permitted for POS transactions involving the purchase of goods or services with the EBT device.
- **Reasonable access to information about the balance left in the account.** At a minimum, all receipts from ATM transactions should include information about the remaining balance and fees; at least two monthly ATM balance inquiries should be allowed for free, and others should be charged no more than the actual cost to the bank for providing the information; and a transaction history should be available free upon request or whenever there is a dispute.
- **Electronic access to benefits that is within a reasonable distance to the recipient's home must be provided.** The financial agent must be able to provide assurances that benefit access is reasonably accessible to all recipients for whom it proposes to provide services.
- **The ATM card or device must be accepted by a reasonable number of merchants in the neighborhood and surrounding area.** The ATM card or device must be accepted by a reasonable number of merchants in the neighborhood and surrounding area who permit both free cash back with purchase transactions and reasonably priced cash withdrawal options.
- **ATMs and POS devices must be accessible to handicapped people.** To provide EBT services, the financial agent must demonstrate an ability to meet the special needs of handicapped recipients of government payments.
- **Recipients with limited reading skills or no English literacy at all also have special needs.** To provide EBT services, the financial agent must demonstrate an ability to meet the special needs of those who are non-English speaking or have limited English proficiency.
- **Training for new electronic transfer recipients.** In addition to providing written materials, financial institutions offering federally established EBT accounts should be required to provide in-person training upon recipient request.

- **Opportunity for recipients of federal EBT to choose their own PINs (personal identification numbers) and to obtain their EBT card by means other than regular mail delivery as necessary.** Federally established EBT accounts must provide for a simple and quick means for recipients with an assigned PIN to change to a number of their own choosing and for alternatives to the mail issuance of the debit device when requested by the recipient.
- **Reasonable procedures for PIN replacement and card replacement.** Financial agents must demonstrate that they will provide simple procedures for requesting and promptly obtaining a replacement card and/or PIN and assure that a clear explanation of the steps an individual must take to initiate this process will be included in the informational materials that will be provided about the account.

Use of non-financial agents and access to mainstream banking services — An essential component in Treasury's selection process of financial agents should be whether *non-financial institutions* will be part of the delivery process and the effect of the choice on access to mainstream banking services in the community. As we have made clear in numerous previous comments to Treasury, it would be wholly improper and unfair for Treasury to mandate the use of any non-financial institution to access federal benefits.

"Non-financial institution" is not a defined term in the proposed regulation. But we can assume that it could cover not only data processors and other types of information management service providers such as those currently involved in state EBT projects but also any provider of financial services, including check cashiers, finance companies, rent-to-own dealers and pawnbrokers. Any entity which could facilitate the access to federal payments for the financial agent might qualify. Currently many of these alternative financial service providers charge as much for their services as the regulatory structure - or lack of regulation - allows. And the low income residents of the community gain little benefit other than the specific service provided from their presence. These fringe bankers make no reinvestment of their substantial profits back into the communities. If Treasury allows this non-regulated industry - which continues without CRA obligations - to operate as either "authorized agents," or subcontractors with banks for the purpose of receiving federal payments, the financial problems in the low income communities will not only continue to be ignored, but they will be exacerbated.

Fringe bankers, such as check cashiers, finance companies, and others doing business in the low income community have succeeded because of the vacuum created by the absence of mainstream banks from low income communities. Implementation of EFT-99 should not bless this absence by allowing mainstream banks to profit from EFT-99, without requiring some actual presence in the low income community — even if it is only in the form of electronic machines.

Treasury's use of alternative financial providers as conduits for the federal payments will be the U.S. imprimatur on the unregulated activities of these alternative providers. The government will be saying, in effect, that the federally insured and regulated banking system is only for those who can afford it. The poor will be required by the government to use alternative, unregulated providers with

none of the benefits and protections furnished to consumers in the financial mainstream. Such a result would be unconscionable.

3) **Essential Issues Affecting Recipients Must be Resolved.**

Stored Value Cards. In a rather offhand manner the Notice of Proposed Rulemaking states:

EBT may utilize a debit card or a stored value card, usable at point of sale (POS) and automated teller machines (ATMs). A debit card is a plastic card with a magnetic stripe that permits access to an account at a financial institution. A stored value card is a plastic card in which a computer chip is embedded. The computer chip retains a record of the card's value.¹⁰

This language is in the context of a discussion of what the concept of "EBT" is, and how states are in the process of implementing various types of EBT programs. **We sincerely hope that the casual mention of stored value cards does not indicate an acceptance by Treasury of the use of this mechanism as a means of providing access to federal entitlement payments.**

Stored value cards are essentially unregulated in the United States at this time. Even if the regulations proposed by the Federal Reserve Board under the Electronic Fund Transfer Act are made applicable,¹¹ there are essentially no consumer protections which would apply to these cards. Only if the stored value cards are considered online and accountable, are there even requirements for disclosures. No error resolution procedures, no protections against loss, no requirements for access to information about the remaining balance on the card, no assurances of acceptability within a geographic region, no limitations on costs are applicable. Given Treasury's repeated public promises that the Electronic Fund Transfer Act would apply to the access to federal funds, surely the mention of stored value cards in the NPRM was simply by way of explaining state EBT programs. **Treasury should not permit the use of stored value cards as a method of accessing federal benefits until there is full federal regulation of this financial product.**

Stigma. Treasury proposes to issue Benefit Security Cards to recipients of federal EBT, even though the access to the federal money will necessarily be through a federally insured, deposit institution. It is not clear that the name of the bank through which the funds flow will also be on the card. We have two concerns here.

The first concern is that federal recipients who have been required to use federal EBT will find there is a stigma attached to the use of the Benefit Security Card, because everyone will know it is

¹⁰62 Fed. Reg. 25572-25573 (May 9, 1997).

¹¹See Federal Reserve Board Docket No. R-0919 for stored value regulations. According to the Section 2601 of Economic Growth and Regulatory Paperwork Reduction Act of 1996, these regulations should become effective on August 1. However, the financial services industry has indicated its strong abhorrence of even this light layer of regulation, and it is likely that another moratorium on regulation under the EFTA will appear on the horizon soon.

actually a government card provided to unbanked federal recipients. Why is this potential embarrassment necessary in the mechanism of delivering federal payments to the unbanked? It isn't. There is no reason that the Benefit Security Card need look any different to the casual observer than any other ATM card. Ownership of the card and the account can be made clear in small writing on the back of the card. Anything more only hurts recipients.

The second concern is whether the financial agent's name will be prominently displayed on the card. We believe that it must be, for both concrete and more ephemeral reasons. The concrete reason is that if the bank's name is not clearly displayed, it will be difficult for recipients to exercise their rights under the Electronic Fund Transfer Act. The other reason is that the process of identifying a certain financial institution as the conduit of their federal payments may encourage recipients' use of that institution as a resource for other financial needs, rather than their using alternative financial providers.

It must be kept in mind that one of the primary reasons for the dual banking system today is racism and prejudice against the poor. Despite numerous opportunities to make money in low income communities, too often banks have participated directly in the low income economy only as a result of the mandates of the Community Reinvestment Act.¹² Now, even with the coming opportunities of EFT-99, banks are still saying "We don't want them (poor people) in our branches." Banks say they are afraid that the presence of too many unbanked people in the branches will drive away their wealthier customers -- thus using economics to justify their prejudice. However, numerous banks around the country currently provide free check cashing to non-bank customers without any discernable loss in business. It isn't economics. Its racism that is the basis of this attitude. Banks' fears of *attracting* the unbanked to their branches must not be condoned by the United States Government. **Every federal EBT recipient must have on their Benefit Security Card the name of the financial institution through which their federal payments are flowing, prominently displayed.**

Protections from Set-Off and Attachment. Many federal payments are protected from attachment and the claims of judgment creditors. The provision with respect to Social Security benefits is typical of these protections:

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.¹³

¹²However, banks have gained economically from this refusal to have a presence in poor neighborhoods by providing financial banking to, and being affiliated with, fringe bankers such as check cashers and finance companies.

¹³ 42 U.S.C. §407(a).

There are similar provisions in the governing statutes for SSI benefits¹⁴ and Veteran's benefits.¹⁵ Also, there are provisions in each of these statutes regarding the government's collection of overpayments, in cases in which too much money has mistakenly been paid to the federal recipient¹⁶. Ensuring that these protections are maintained, and not compromised, in the electronic funds transfer environment raises several issues:

- (1) The extent to which a prohibition against set-offs will apply to Social Security and SSI funds deposited in the EBT accounts.¹⁷
- (2) How provisional credits made to recipients under the requirements of the Electronic Fund Transfer Act¹⁸ after there has been an unauthorized transfer, will be recouped from the recipient when the bank has determined that the transfer was *not* unauthorized.
- (3) The extent to which notice and hearing rights required under federal law for recoupment of overpayments will apply to the recoupment of provisional credits made under the EFTA.

The law is clear regarding attachment and protection from the execution from claims of judgment creditors. The law is less clear regarding protecting those benefits from claims of set-off by the bank in which the moneys are held.¹⁹

These problems are most likely to arise when there is a dispute regarding the appropriate application of the Electronic Fund Transfer Act. An example of when a transfer may be considered to have been unauthorized would be when the recipient has reported a card stolen and money missing from the account; the bank makes the provisional credit required by 12 C.F.R. §205.11(c), then determines that the transfer was made by the recipient's brother who knew the PIN number because he had used the card with permission on previous occasions. Under the definition of "unauthorized transfer" in the EFTA, this would not be considered an unauthorized transfer.²⁰

¹⁴ 42 U.S.C. §1383.

¹⁵ 38 U.S.C. Section 5301.

¹⁶ 42 U.S.C. Section 1383 applies to overpayments of SSI benefits, and is an example of these provisions.

¹⁷ 38 U.S.C. §5301(b) prohibits set-offs for Veterans Benefits.

¹⁸ The financial institution is required to provisionally credit a consumer's account in the amount of the alleged error within 10 business days after receiving the notice of error. 12 C.F.R. §205.11(c).

¹⁹ For example, in *Bernardini v. Central National Bank of Richmond*, 290 S.E.2d 863 (Va. 1982) the court allowed set-off against an account containing Social Security benefits (as well as wages and Workers Comp benefits, which were exempt under Virginia law), and in *Frazier v. Marine Midland Bank*, 702 F.Supp. 1000 (W.D.N.Y. 1988) the district court held that bank set-offs are not forbidden by §407(a). They are extra-judicial, arising from the contract between the bank and the depositor.

²⁰ The definition of "unauthorized electronic fund transfer" does not include "any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account, unless the consumer has notified the financial institution involved that transfers by such other person are not longer authorized,..." EFTA §903(11) .

In the recent Direct Payment system pilot project in Texas, it appears that in this scenario the financial institution is simply going back and withdrawing the money directly out of the account. No notice or hearing is offered, even though the provisional credits are exactly analogous to an overpayment. Yet under the Social Security statute, notice, hearing and an extended time period for repayment are required. The actions in Texas are wrong and probably illegal.

The correct policy should be that set-offs are never permitted for special accounts established solely to receive federal benefit payments. When provisional credits have been incorrectly made by the financial institution, the institution should be able to recoup its money from the federal government immediately. The government then should treat the provisional credit as an accidental overpayment and apply the overpayment rules, including the right to notice and hearing, accordingly.

Conclusion. In summary, we urge that Treasury not finalize Part 207 of 31 C.F.R. until it issues a new Notice of Proposed Rulemaking that fully discloses the proposed intent and terms of these provisions and addresses the important concerns raised by representatives of recipients. Public comment must be allowed on all these specifics.

Appendix

Basic consumer protections for federal EBT are absolutely essential. The minimum attributes of a required electronic account for the receipt of federal payments must meet the following criteria. If high costs, excessive risks and/or difficulties in accessing the payment are inherent, the electronic option will be far worse than the paper based system.

- **Prohibition on the assessment of monthly account fees.** Many recipients of federal benefit payments, and especially those who are currently unbanked live at or below the federal poverty guidelines. For example, one of the criteria for *receipt* of SSI payments is meeting an income eligibility test. One reason some recipients have avoided establishing bank accounts is because they cannot afford the fees and have found alternative means for cashing their benefit checks at little or no cost.

Any mandatory federal EBT system must prohibit the contractor from imposing any monthly account fees on recipients.

- **Reasonable access to cash withdrawals.** Many people budget on a weekly basis, so they should be permitted to withdraw needed cash at least on a weekly basis. Moreover, it is to the institution's financial benefit to encourage the recipient to leave some portion of the payment in the account, as the account is not interest bearing and the institution benefits from the float.

Reasonable access to cash withdrawals should include no fewer than four free ATM withdrawals at the financial institution at which the account is held per month, plus a reasonable number of ATM balance inquiries. In the absence of ATM availability, the same general rules should apply to teller withdrawals.

- **Limits on fees for access to cash.** There are two types of fees here - fees charged by the financial agent, and fees charged at "foreign" institutions. Fees charged at "home" financial institution ATMs for withdrawals over the first four per month should be limited to actual costs. It is doubtful that fees at foreign financial institutions can be limited, but there must be adequate access to the agent's ATM in the recipients' community.

Recipients who use the ATMs of the financial agent with whom the account has been established or any of its subcontractors, on a more frequent basis than four times a month, should be charged no more than the actual cost of the transaction to the financial agent.

- **Prohibition on fees for point of sale transactions involving a purchase.** Both the merchant and the bank gain when payments are made electronically when a sale of goods or services has taken place. The merchant receives payment immediately, without the cost of having to count the cash, the worry of having to collect on a check, or the expense of the merchants' discount when a credit card is used. The bank

similarly benefits. Further, the bank benefits because it has the use of the recipient's money until the last possible moment. The recipient of electronically dispensed federal payments should thus not be charged for electronically paying for goods, when by doing so it benefits everyone else in the transaction.

The financial agent must be able to provide assurances that no fees or surcharges will be permitted for POS transactions involving the purchase of goods or services with the EBT device.

- **Reasonable access to information about the balance left in the account.** Providing monthly statements--as otherwise required to consumers under the EFTA--is a relatively expensive service which might reasonably be waived for recipients of EBT accounts. However, that leaves the necessity that recipients be entitled to find out, on a reasonable basis, the remaining balance in their accounts, as well as the reason, the timing and the amount of any fees imposed. It seems reasonable to require that every ATM transaction include the provision of a receipt which indicates the imposition of fees, to the extent applicable, and the remaining balance in the account. To the extent that further information is necessary, or recipients wish to find out any of this information at other times, they should be able to call a toll free number, provide appropriate identifying information and obtain their account information. Whether or not this telephone service is available, recipients should be able to obtain a transaction history upon request at minimal or no cost.

At a minimum, all receipts from ATM transactions should include information about the remaining balance and fees; at least two monthly ATM balance inquiries should be allowed for free, and others should be charged no more than the actual cost to the bank for providing the information; and a transaction history should be available free upon request or whenever there is a dispute.

- **Electronic access to benefits that is within a reasonable distance to the recipient's home must be provided.** Access based on distance is generally a subjective matter. In a rural area, requiring an ATM or POS within a mile from the recipient's home seems to be unrealistic and perhaps unnecessary. However, given the expense (both financial and emotional for some recipients) of urban transportation, as well as the degree of physical handicap for many elderly and disabled recipients, access to benefits that is even a mile away may be too far. The standard thus should remain subjective.

The financial agent must be able to provide assurances that benefit access is reasonably accessible for all recipients for whom it proposes to provide services.

- **The ATM card or device must be accepted by a reasonable number of merchants in the neighborhood and surrounding area.** There are currently a number of ATM networks--Cirrus, Honor, etc.--most of which are reasonably accessible at merchants in the geographical area in which the banks offering them are

located. However, some networks are more popular in some areas than others, and are thus less accessible in the "foreign" areas. If access to cash benefits through ATMs is limited before fees are imposed, it is important that POS access be reasonable. This means that there must be a sufficient number of stores which both accept the type of ATM network device provided in the geographic vicinity in which the federal payee lives and permit the use of the card for cash back and withdrawals as well as purchases.

The ATM card or device must be accepted by a reasonable number of merchants in the neighborhood and surrounding area who permit both free cash back with purchase transactions and reasonably priced cash withdrawal options.

- **ATMs and POS devices must be accessible to handicapped people.** Many recipients of direct federal benefit payments are eligible for such payments on the basis of a physical or mental handicap. Their handicap may cause them to be unable to participate in an electronic banking environment unless the equipment is specially modified to accommodate any handicapping condition they have, such as braille PIN pads, wheelchair accessible ATMs, etc.

Unless Treasury is prepared to monitor compliance, merely requiring system compliance with the Americans with Disabilities Act is not sufficient. Leaving it up to the aggrieved individual to somehow find a way to manage while independently pursuing an ADA claim is an unreasonable expectation for government benefit recipients who are both poor and disabled.

To provide EBT services, the financial agent must demonstrate an ability to meet the special needs of handicapped recipients of government payments.

- **Recipients with limited reading skills or no English literacy at all also have special needs.** ATM and POS on-screen messages must meet the needs of those with limited English proficiency or who are non-English speaking as must the written materials provided to recipients.

To provide EBT services, the financial agent must demonstrate an ability to meet the special needs of those who are non-English speaking or have limited English proficiency.

- **Training for new electronic transfer recipients.** Many of the 10 million unbanked recipients of federal payments may have never had a relationship with a financial institution or used a credit or debit card prior to implementation of EFT-99. In recognition of this, there should be an opportunity for anyone who desires some personal training on how to use an ATM for a balance inquiry or withdrawal to receive some minimal level of assistance from the financial institution. This should be in addition to any written training material that may be provided.

In addition to providing written materials, financial institutions offering federally established EBT accounts should be required to provide in-person training upon recipient request.

- **Opportunity for recipients of federal EBT to choose their own PINs (personal identification numbers) and to obtain their EBT card by means other than regular mail delivery as necessary.** Our strong preference would be for all electronic delivery systems to use PIN self-selection as the norm to reduce the likelihood of the individual's needing to write the number down and carry it with him or her in order to remember it. We recognize however that PIN assignment is more likely to be the norm. In such cases, individuals must be notified at the time of card issuance of the procedures to follow if they would prefer to change their PIN to a self-selected number. Moreover, there must be a simple process to effectuate such a change that does not delay the individuals' access to their federal payments.

In addition, for advocates, the mailing of cards and PINs to recipients raises all the issues of theft, loss, and delay within the mail system that already exist in the paper based benefit delivery system. EBT systems must be able to accommodate alternative card issuance mechanisms for any recipients who express a concern about routine mail issuance.

Federally established EBT accounts must provide for a simple and quick means for recipients with an assigned PIN to change to a number of their own choosing and for alternatives to the mail issuance of the debit device when requested by the recipient.

- **Reasonable procedures for PIN replacement and card replacement.** It is critical that any electronic system for delivering federal payments have established procedures for promptly responding to recipient requests for a replacement of either the ATM card or the PIN. The need to get a replacement card or PIN could arise for any number of reasons, including the loss of the card, damage to the card or the magnetic strip on the card, failure to remember the assigned PIN, or recipient concern that the card and/or PIN has been compromised. Use of the card and PIN may well be the only way that federal payees can access the benefits they need to pay their bills and provide for the bare necessities.

Financial agents must demonstrate that they will provide simple procedures for requesting and promptly obtaining a replacement card and/or PIN and assure that a clear explanation of the steps an individual must take to initiate this process will be included in the informational materials that will be provided about the account.